IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4555 OF 2007

Smt. Mamta Hetal Joshi .... Petitioner

versus

Hetal Vijaykumar Joshi ..... Respondent.

Shri R.D.Dave for the petitioner
Shri Vivek Kantawala i/b. Vivek Kantawala & Co. for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 21ST AUGUST, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner and the respondent are wife and husband respectively. The marriage was solomnised in the year 1990. In the year 1992 a male child is borne to the petitioner from the respondent. The relations of the parties were strained and hence the petitioner filed a petition in the Family Court for maintenance and separate residence for herself and her minor son. On 15-4-2004 the Family Court passed an order of injunction restraining the respondent from creating any third party interest, in the three immovable properties and also passed an injunction order in

regard to the bank account. The Family Court has granted interim maintenance in the sum of Rs. 2000/- to the wife and Rs. 2000/- to the son.

3. On an application moved by the present respondent, the order dated 15-4-2004 in regard to the immovable properties has been vacated. It is this part of the order by which the petitioner is aggreived. The petitioner apprehends that the respondent may dispose of all the three immovable properties, thereby making it impossible for the petitioner to recover the amount of maintenance and separate residence, that may be ultimately passed by the Family Court. The learned counsel for the respondent submits that the property at serial no.1 viz. one bed room, hall kitchen flat situated at, Sai Amrut Co-op.Hsg. Sty. Flat No.501, J.S.Road, Dahisar (w), is the one wherein the respondent is staying and hence the respondent does not propose to alienate the said flat or create any third party interest therein. In regard to the property at serial no.3 situated at Neel Dhara Co-op.Hsg.Sty, shop no.3, Devidas Lane, Borivali (W) Mumbai -13, it is a commercial shop. The learned counsel for the petitioner submits that the same is already sealed by CID police in relation to some criminal offence committed by the occupants. A categorical statement is made by the learned counsel

for the respondent that the respondent does not propose to deal with the said property for the present. In all fairness the learned counsel for the respondent submits that if the injunction order granted on 15-4-2004, even if permitted to be continued in relation to property at serial nos.1 and 3 is concerned, the respondent has no objection. However, it is submitted that the property at serial no.2 which is one room and kitchen, in a chawl situated at Gawde chawl, Room No.1, Rokadia lane, Jaiwant Sawant Road, Dahisar (W), the respondent proposes to use the said property with a view to raise funds and hence submits that no interference with the impugned order to the extent it relates to the property at serial no.2 is called for. 4. It is submited that the respondent is not keeping good health and is suffering from infective spondilodiscitis at T10-T11 as well as T3 levels as described in favour of tuberculosis. MRI report of dorso-lumbar spine with screening of whole spine is placed on record which goes to substantiate the fact that the respondent is suffering from serious ailment. The learned counsel for the respondent submits that if the respondent is not permitted to deal with the property at serial no.2 situated at Dahisar, respondent will not be in a position to raise funds for the maintenance of the respondent so also the

petitioner. Having regard to the totality of the facts and circumstances, I deem it appropriate to modify the order dated 31-5-2007 passed by the Family Court to the extent it relates to the property described at serial nos. 1 and 3 in the operative order. In view of the statement made by the learned counsel for the respondent that the respondent does not propose to deal with the property at serial nos. 1 and 3 for the present, the impugned order dated 31-5-2007 stands quashed to the extent of property at serial nos.1 and 3. Thus the order dated 15-5-2004 granting injunction to the extent of property at serial nos. 1 and 3 is concerned, shall continue to operate. However challenge to the impugned order to the extent it deals with the property at serial no.2 is concerned, the writ petition is dismissed. Rule made absolute in the above terms.

5. Having regard to the facts and circumstances, I hope and trust that the Family Court shall proceed to decide the applications as expeditiously as possible.

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